

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA) Case No. 1:12CR123-1
4) 1:12CR399-1
5 vs.) Greensboro, North Carolina
6 KRISTEN DOUGLAS WELTER,)
7) May 30, 2013
8)
9) 9:26 a.m.
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TRANSCRIPT OF SENTENCE

BEFORE THE HONORABLE WILLIAM L. OSTEEN, JR.

UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

(At 9:26 a.m., proceedings commenced.)

THE COURT: You may proceed.

MR. GREEN: The first matter is United States versus Kristen Douglas Welter. It's 1:12CR123-1 and 399-1. It's on for sentencing.

THE COURT: All right. Thank you, sir.
Ms. Costner, good morning.

MS. COSTNER: Good morning, Your Honor.

THE COURT: Are you and Mr. Welter ready to proceed?

MS. COSTNER: Yes, Your Honor.

THE COURT: All right. Well, let me make one thing. I think where we stand -- I raised an issue last time about the one point, and Mr. Green wrote what I thought was a pretty persuasive brief on the subject and then conceded that under the facts of this case they couldn't prove the one point, I think is the way I understood it. So I assume there's no objection from the defendant on that issue.

MS. COSTNER: No, Your Honor.

THE COURT: So who's here -- good morning, Ms. Meyers. I will go ahead, based on my research in the Government's position, and remove the one point that was set out in paragraph 53 of the presentence report and apply it

1 under Section 4A1.1(e). I do not -- I'll tell everybody, I
2 do not anticipate running into this very often under the old
3 Fair Sentencing Act, but it comes up pretty regularly under
4 structured sentencing, it seems like, these days. So keep
5 in mind the issues that can arise when there are offenses
6 consolidated for judgment under the current state law.

7 Now, where does that leave us in terms of
8 objections at this point, Ms. Costner?

9 MS. COSTNER: Your Honor, I did not file anything
10 additional to what Mr. Chamberlin filed, but, you know, he
11 made two factual objections which have no impact at all on
12 Mr. Welter's guidelines, but they are two objections
13 Mr. Welter does feel strongly about and would still want at
14 least those put forth.

15 Mr. Chamberlin objected to the enhancement for
16 obstruction of justice. I read his memorandum and wouldn't
17 add anything to that in terms of any legal research.

18 And then Mr. Chamberlin opted not to address the
19 acceptance of responsibility component in light of the
20 projected motion to withdraw the plea to the child
21 pornography charges. I understand the law as it stands as
22 far as -- as that goes. I would just say to the Court on
23 behalf of Mr. Welter that he did accept responsibility for
24 the gun charge and would just want to point that out to the
25 Court, but I understand the law as it applies in that case.

1 I believe those were all of the objections other
2 than the one point for the criminal history, and I'm not
3 intending to put on any evidence with respect to the factual
4 objections except just to echo that, again, Mr. Welter does
5 feel very strongly about these factual discrepancies.

6 THE COURT: All right. For some reason I remember
7 it seems like one of them was -- I can't find it in the
8 pleading. Let's see. Who disputed -- it seemed like there
9 was objections one and two. I'm sorry, for some reason,
10 Ms. Boggs [sic], I'm having trouble running down those
11 factual objections.

12 MR. GREEN: There were two. One related to the
13 question of whether when first interviewed by the FBI he
14 denied -- he indicated he was Christian, and the second was
15 related to when the agent came to his door on the gun
16 purchase whether the agent asked him to go get the gun or he
17 brought it out voluntarily.

18 THE COURT: All right. That flowed from the
19 presentence report. That's right. That's what it was.

20 Okay. Objection Number One, defendant denies that
21 he described his religious beliefs as Christian. I
22 understand Muslim component, and, frankly, it doesn't make a
23 difference to me in terms of sentencing or anything else,
24 Muslim, Christian, what he may have told law enforcement
25 officers at the time, so I will not consider that fact in

1 any way in imposing a sentence or -- in determining a
2 sentence or calculating the guideline range.

3 Paragraph 8 the presentence report. I've
4 forgotten what the circumstances were on --

5 MS. COSTNER: Your Honor, that was when the agent
6 first interviewed him in March of 2012, and it's
7 Mr. Welter's contention that the agent brought up the
8 subject of the firearm, not Mr. Welter.

9 THE COURT: And I -- that's right. I don't
10 really -- the PSR says Mr. Welter stated he wanted to
11 purchase a semiautomatic .22 caliber handgun with a 9-inch
12 barrel. I don't know whether Mr. Welter bought it up or the
13 agent brought it up or where it came up, but I don't find
14 that fact to be relevant to the calculation of the guideline
15 range. Does he deny completely that he discussed with the
16 agent the purchase of a 9-inch .22 caliber?

17 MS. COSTNER: No, Your Honor, not at all. It's
18 just who initiated the conversation, and it was his
19 contention that it was the agent not him. But certainly
20 once the subject was brought up, he participated in a
21 discussion about it.

22 THE COURT: All right. Well, I at this point in
23 time don't find the person who may have initiated -- the
24 fact that the agent or Mr. Welter initiated the discussion
25 to be a fact upon which I will rely on in determining the

1 guidelines or in determining the -- an appropriate sentence
2 in the case; and, furthermore, I'm not sure whether I --
3 that I read the report to specifically or implicitly suggest
4 Mr. Welter initiated the discussion. I don't know how that
5 discussion may have come up from what I read in the report.

6 That's not a commentary on either Mr. Welter or
7 the FBI agent. I just don't read the report to clarify who
8 may have initiated what in terms of that discussion, so I'll
9 find those two don't need to be resolved because they have
10 no impact on either the guidelines or the calculation of an
11 advisory sentence.

12 Now, in terms of the objection to the obstruction
13 of justice that has been imposed here, I don't understand
14 there to be any objection to the facts, that is, that
15 Mr. Welter contacted a neighbor and asked him to destroy two
16 hard drives. Is that correct or incorrect?

17 MS. COSTNER: Well, the letter said, you know --
18 in addition to many other things that he asked his neighbor
19 to do, he said if you find hard drives, throw them away. I
20 don't even believe he said destroy them. I think it was
21 just throw them away. You know, I would just point out to
22 the Court at that time the house had been searched,
23 computers had been seized. Mr. Welter had no idea whether
24 those hard drives had been seized or not, and so I would
25 just contend that his -- it was if you find them, throw them

1 away, not go seek them out and destroy them or, you know,
2 erase them or anything of that nature. So it was in a list
3 of water my plants, make sure the lights are turned off --

4 THE COURT: Your argument relates to
5 interpretation of the facts, not so much the facts that are
6 set out themselves.

7 MS. COSTNER: Right. No question that that is not
8 mentioned in the letter about the hard drives.

9 THE COURT: All right. And then I think the
10 Government set forth an additional argument. I'm sorry. I
11 have a number of papers in Mr. Welter's case. The
12 Government contended in its response that Mr. Welter denied
13 that he was, in fact, guilty of the child pornography
14 offense to which he had previously pled guilty based on
15 answers given during the psychosexual evaluation.
16 Obviously, at this point in time Mr. Welter's testimony in
17 terms of withdrawing his plea had not been offered to the
18 Court. And then the Government also contends that the
19 destruction of the two hard drives or the instructions to
20 destroy the two hard drives constituted obstruction as well.

21 Do you want to be heard on the second argument as
22 well?

23 MS. COSTNER: In terms of the denial of --

24 THE COURT: Yes.

25 MS. COSTNER: -- guilt to -- Your Honor heard the

1 testimony and the argument at the motion that this is based
2 on Mr. Welter's contention that he did not know that these
3 files or these images were on his hard drive. He did not
4 deny their existence, but just the knowledge. They were in
5 temporary internet files. They had not been accessed since
6 2007, 2009, so for many years. This was a separate hard
7 drive, not a part of an ongoing computer.

8 So his defense, had he been allowed to have a new
9 trial, would have gone to knowledge and knowingly having
10 these images on the hard drive. So I would contend that
11 that's a little different than saying, well, I don't know
12 how that hard drive got there, that must have been someone
13 else's hard -- you know, clearly, they were in a file with
14 his, you know, kristenwelter/internetexplorer/temporary
15 files, and then the AVI was in the RealPlayer file also
16 under his name. So it would have gone more to the knowledge
17 element, and I'll contend that makes it a little bit
18 different.

19 THE COURT: All right. Did you want to be heard
20 further on the first part? I didn't mean to cut you off. I
21 understand your argument on interpretation of what was meant
22 by that note. Go ahead.

23 MS. COSTNER: I'm sorry. I didn't mean to
24 interrupt, Your Honor. Mr. Chamberlin, I think, briefed it
25 and set out the law and his contentions in his memorandum,

1 and I would just contend in light of that and the fact that
2 the letter to the neighbor was not specific only as to the
3 hard drives, it involved other activities, that really at
4 the time Mr. Welter's house had been searched. It had been
5 searched pursuant to a search warrant, and Mr. Welter at
6 that point had been in custody since that time and really
7 had no idea if, you know, hard drives had been seized or not
8 seized or computers had been seized or not. It was more of
9 an if you find, do this, not please go into this desk into
10 this locked drawer and do this. It was not a specific. It
11 was more of a conditional. If you see it, throw it away.

12 And so I would argue that that makes it a little
13 bit different than directing somebody to go to a particular
14 piece of evidence perhaps hidden in a place or something
15 like that, especially in light of the fact that this house
16 and the outbuildings and everything had been searched
17 pursuant to this search warrant and searched very
18 thoroughly, and, you know, he could have just as easily have
19 assumed that the FBI had gotten all these items. He had no
20 way to know since he was not present, he was in custody.

21 THE COURT: All right. Mr. Green, I understand
22 the two arguments. I assume the Government still urges both
23 grounds in support of the obstruction --

24 MR. GREEN: We do.

25 THE COURT: -- enhancement. In terms of the

1 destruction of the computers, the application note says:

2 "This adjustment applies if the defendant's
3 obstructive conduct occurred with respect to the
4 investigation, prosecution, or sentencing of the
5 defendant's instant offense of conviction; and, B,
6 related to the offense of conviction and any
7 relevant conduct or otherwise closely related case
8 such as that of a codefendant.

9 Obstructive conduct that occurred prior to
10 the start of the investigation of the instant
11 offense of conviction may be covered by this
12 guideline if the conduct was purposefully
13 calculated and likely to thwart the investigation
14 or prosecution of the offense of conviction."

15 There's a little bit of a component on destruction
16 of the hard drives -- any hard drives you find in that we
17 had the -- we'll call it the security investigation that
18 started and culminated with the 922(g) offense, and then we
19 had the second report from a neighbor who is asking to
20 destroy the hard drives. That leads to this instant offense
21 investigation. So I'm not sure how exactly to classify what
22 he did.

23 In other words, if a defendant commits an offense
24 and throws some of the evidence away before an investigation
25 starts, then that doesn't constitute obstruction, I don't

1 think, under this guideline application; but if
2 investigation has started, and he's destroying evidence to
3 try to avoid detection of the offense, then you've got a
4 different circumstance. Here it's kind of right on the
5 line.

6 MR. GREEN: Right, and I think it's that second
7 part of the guideline having to do with an offense -- the
8 instant offense. When it refers to the instant offense, I
9 mean, the child pornography offense.

10 THE COURT: Right.

11 MR. GREEN: I would liken it to if there was a
12 fraud investigation, and they came through and collected a
13 bunch of files in a fraud case, but a defendant also had
14 whatever contraband, illegal narcotics, whatever it is, and
15 said, hey, you know what, they may come back, we need to go
16 ahead and destroy that as well, that's going to be
17 obstructive conduct; and I think that's what the guideline
18 calculates or anticipates.

19 THE COURT: Well, that's not -- the controlled
20 substances aren't really related to the instant offense and
21 the fraud.

22 MR. GREEN: Well, I understand, but I don't think
23 that's what's required under the guidelines. I think the
24 guidelines pretty clearly contemplate the first section
25 being related to the offense of conviction and relevant

1 conduct or related offense; and then if it was purposefully
2 calculated or likely to thwart the investigation of the
3 offense of conviction. So I don't think there's -- in other
4 words, I don't think the obstructive conduct when you have
5 two offenses of conviction relates only to one and can only
6 relate to one, if that makes sense.

7 THE COURT: That's what I'm struggling with.
8 Relevant conduct is all acts aided, abetted, counseled, and
9 procured in preparation for the offense of conviction,
10 during the commission of the offense of conviction, or in an
11 effort to avoid detection for the offense of conviction in
12 circumstances other than jointly undertaken conduct. So
13 it's preparation for, commission of, and avoiding detection
14 of. That's the definition of relevant conduct.

15 MR. GREEN: Yes, sir.

16 THE COURT: And your example, possession of a
17 controlled substance, unless there's some relationship to
18 the fraud, really isn't conduct that's committed in
19 preparation for, during the commission of, or to avoid
20 detection of for the offense of conviction. So I'm not sure
21 I necessarily agree. I'm not saying I disagree, but I think
22 it's a tougher argument to say controlled substances or
23 child pornography in this case is relevant conduct to the
24 offense of conv -- or the offense of investigation.

25 So it seems to me the obstructive conduct --

1 investigation, prosecution, or sentencing. None of that had
2 started with respect to the child pornography offense at the
3 time they were destroyed.

4 MR. GREEN: Yes, sir.

5 THE COURT: So it's -- that's all going on with
6 respect to security issues as well as a gun.

7 MR. GREEN: Yes, sir.

8 THE COURT: So is it a closely related offense?
9 Is that what you contend?

10 MR. GREEN: It is closely related, but if I'm
11 looking at the application note:

12 "Obstruction conduct that occurred prior to the
13 start of the investigation of the instant offense" -- so if
14 the instant offense is child pornography, clearly, this
15 obstructive conduct occurred prior to that investigation of
16 that -- "may be covered by this guideline if the criminal
17 conduct was purposefully calculated and likely to thwart
18 investigation of the prosecution of the offense of
19 conviction."

20 So, you know, as I set out in -- as my paper,
21 there's no question Mr. Welter clearly knew that they were
22 interested in looking at his computer -- computers, and he
23 gave consent to do so.

24 THE COURT: And they took them.

25 MR. GREEN: They took them, at least he thought

1 they did; and, of course, he got discovery in the case and
2 would kind of be aware of what was seized and what was not
3 seized. And so now we have -- now we have -- I'm sorry.

4 THE COURT: I don't read his letter as having
5 occurred in relation to discovery. It was they took his
6 computers, he goes to jail or detention, whatever, and then
7 he wrote a letter while he's in jail saying --

8 MR. GREEN: Yes, sir.

9 THE COURT: -- go water my plants; and by the way,
10 if you find any computer hard drives, throw those out, too.

11 MR. GREEN: That's right. And so the question, I
12 think, for the Court is looking at Application Note One, is
13 it obstructive conduct? I think, you know, whether it's,
14 you know -- you know, feed the dog, and also get rid of
15 my --

16 THE COURT: You would disagree with Ms. Costner's
17 suggestion of the implication of the note.

18 MR. GREEN: Yes. I think it's quite clearly kind
19 of in a kind of common sense approach, hey, there's some
20 stuff I need you to take care of, one of which is throwing
21 out these hard drives.

22 It clearly started prior to the start of the child
23 pornography offense because they didn't know that there was
24 child pornography existent at the time, and it was
25 purposefully calculated to thwart the investigation of the

1 offense of conviction, which is the child pornography
2 conviction. So I think if you -- if you kind of -- almost
3 if you stripped away the gun charge, if you had the same
4 contact -- contact with police, they come and seize your
5 computers, and you subsequently say, hey, we need to go get
6 rid of that hard drive before there's a charge, it is
7 calculated to obstruct their investigation into that
8 criminal offense.

9 So I think it's -- I don't even really think we
10 need to be related conduct or relevant conduct because the
11 Government will acknowledge it's a pretty big gap between
12 the offense of conviction and, more specifically, what the
13 Court is aware what they were looking for with regards to
14 Mr. Welter and the ultimate discovery of the child
15 pornography. But nevertheless, it is both the instant
16 offense and the offense of conviction, that is, the child
17 pornography, and it appears to me pretty clearly that the
18 guideline would allow application of obstructive conduct
19 for -- basically something that -- something you did before
20 the investigation really gets rolling into what you are
21 ultimately convicted of.

22 So I think if the Court finds that that was
23 obstructive conduct, then pretty clearly it's going to
24 apply. But I'm not going to argue that it's going to relate
25 under those first prongs of a closely related case or

1 necessarily relevant conduct to the security investigation
2 or the possession of firearm. Thank you.

3 THE COURT: All right. Ms. Costner, I think the
4 problem -- one of the problems that you have here for your
5 client is we actually have two offenses of conviction, a
6 922(g) and this other. The investigation -- even if you
7 carve out the child pornography, the investigation of the
8 first offense -- or the investigation that led the pros --
9 the prosecution of the first offense was very broad, that
10 kind of security threat type investigation; and during the
11 course of that investigation, I think by the time Mr. Welter
12 wrote his letter, the Government has -- the investigators
13 had indicated an interest in the material on his computers
14 for a variety of reasons, arguably in some respects related
15 to the gun charge in that -- has he communicated about guns?
16 Is there any evidence that he's possessed other firearms in
17 addition to the ones that we've seen.

18 I'm not sure that I find it compelling that
19 computer hard drives were destroyed -- I mean were attempted
20 to be destroyed during the course of that investigation, and
21 the only offense that was later discovered was the child
22 pornography offense. In other words, it seems to me there
23 is a very broad investigation ongoing. The Government
24 has -- the investigators have expressed an interest in
25 examining the defendant's computers in relation to that

1 investigation; they've taken the ones they found; and then
2 Mr. Welter tried to have a neighbor destroy the remaining
3 computers. So I'm not sure there is necessarily much of a
4 distinction between the original investigation and this
5 particular case, even though the offenses charged ultimately
6 ended up being separate offenses.

7 What's your response to that?

8 MS. COSTNER: What I would say to that, Your
9 Honor, is this is a situation where it wasn't just where
10 Mr. Welter turned over computers. There was a search
11 warrant executed on his residence, and there was a very
12 thorough search. I've seen the images. So, you know,
13 Mr. Welter knew that his home had been searched. He knew,
14 as you said, there was an interest in the hard drives and
15 other -- or any hard drives or any computer -- computers
16 that at the time he wrote the letter, he didn't know what
17 they had found and what they hadn't found. It was a
18 conditional letter "if you find." For all he knew, the hard
19 drives had been found and looked at and reviewed by law
20 enforcement and left there.

21 I mean, at this point he doesn't know what they're
22 interested in, what they've looked at or haven't looked at,
23 but they did have complete access to his home. So it wasn't
24 a situation where they came to his door and said can we have
25 your computers, and he handed them out the door to them, and

1 off they went. They took them into custody, and they went
2 through everything; and when he's sitting in jail, he
3 doesn't know what they've found and what they haven't.

4 So in his mind easily they could have found the
5 hard drives. They could have reviewed them. They could
6 have found nothing on them of interest. You know, we know
7 that there were things on them of interest, but you also
8 heard that, you know, his defense to this would be he didn't
9 know of the existence of those particular images. So if
10 they are left in his home, it may be because the law
11 enforcement has either looked at them or has no interest in
12 them at that point in time. So any request to throw them
13 away could be an innocent request in terms of not trying to
14 destroy evidence of child pornography, but, you know, if it
15 had adult pornography or if it had financial information to
16 destroy it and get rid of it so that somebody coming into
17 the house couldn't have access to it. That could be an
18 explanation as well.

19 And I would ask the Court to consider that again
20 in light of the fact that law enforcement had access to the
21 entire house, and these hard drives were not in some safe
22 that required a combination. They weren't in a secret, you
23 know, hideaway place or under a floorboard or anything like
24 that. I think they were in a drawer where anybody could
25 have found them, and certainly they did a thorough job of

1 looking.

2 As you pointed out, this is a letter that he wrote
3 with a list of things to do not in response to discovery.
4 You know, just I would proffer that he did not receive a
5 list of what had been seized from the house. That was
6 contained in the discovery. But, you know, as Mr. Green
7 well knows, we don't get to hand those things to our
8 clients. We have to sit down and discuss with them what's
9 in discovery, they can maybe take a look at them, but they
10 can't keep what we receive from the Government in terms of
11 discovery. I don't know whether Mr. Chamberlin had gone
12 over it, whether he had received discovery at that point in
13 time. But you don't see in the letter, well, the Government
14 didn't get this, so go get it and throw it away. It's if
15 you find it, throw it away, if it's there, so he didn't
16 know.

17 THE COURT: Well, the letter was certainly
18 alarming enough to cause his neighbor instead of doing what
19 Mr. Welter asked, he turned the letter -- or whoever got the
20 letter to turn it over to the FBI for their review. In my
21 mind that at least is some suggestion of the way a third
22 party interpreted what was included in the letter.

23 MS. COSTNER: Well, and I will say, too, Your
24 Honor, one thing that Mr. Welter wanted me to point out at
25 least at some point in time, and I'll say it now.

1 Subsequent to his arrest, there were news reports and --
2 that made him out to be a terrorist basically. So, you
3 know, certainly it may be if she saw something about a hard
4 drive, she may have felt uncomfortable given the huge amount
5 of publicity that came along with Mr. Welter's arrest. It
6 may have had nothing to do with, you know -- I mean, I
7 understand what the Court's saying. That may have made her
8 uncomfortable in and of itself, not just the letter. I
9 mean, the letter is -- you know, I've got it here. It's a
10 little hard to read, but it doesn't -- it just says if you
11 find it, throw it away. Not go look for it, not seek it
12 out, not, you know, I have it in a hidden safe, here's the
13 combination, anything like that. It's just in a list of
14 things to do.

15 THE COURT: Doesn't that then take us back to the
16 original issue, and that is that Mr. Welter attempted to
17 destroy computer hard drives during the course of a
18 terrorist/security investigation?

19 MS. COSTNER: But there's no evidence on those
20 hard drives there was any information whatsoever that would
21 factually tie him to some terrorist group or, you know,
22 terroristic acts or terroristic knowledge. So his letter to
23 this neighbor was just these are hard drives that I -- you
24 know, I want you to get rid of, but not -- there's no
25 evidence that he was getting rid of any of that information.

1 I'm just saying that may be what was in her mind at the time
2 as opposed to something about the letter that made her
3 uncomfortable. The publicity that was attached to his
4 arrest may have made her uncomfortable.

5 THE COURT: All right. Do you want me to look at
6 the letter? I mean, it's described in here. I'm not asking
7 to. Everybody keeps referencing the letter.

8 MS. COSTNER: No, Your Honor, I --

9 THE COURT: Mr. Green, do you have any objection?

10 MR. GREEN: No, sir.

11 MS. COSTNER: It's a little difficult to read,
12 I'll say that. It's not the best, unless Mr. Green has a
13 better copy.

14 MR. GREEN: You go ahead, and I'll see if I can
15 find a better copy for you.

16 THE COURT: I read that number three as "Look in
17 my workroom, and see if you can find any computer hard
18 drives. If you find any, please throw them away." Is that
19 correct?

20 MS. COSTNER: Yes, Your Honor. I would just point
21 out that law enforcement certainly had access to the
22 workroom along with everything else through that search
23 warrant.

24 THE COURT: All right. Do you want me to mark
25 this, or just put it in the file?

1 MS. COSTNER: Your Honor, I can --

2 THE COURT: You can have it back.

3 All right. In Mr. Welter's case, I am going to
4 find that the obstruction of justice enhancement is properly
5 applied. We've talked about 3C1.1: If the defendant
6 willfully obstructed or impeded or attempted to obstruct or
7 impede the administration of justice with respect to the
8 investigation, prosecution, or sentencing of the instant
9 offense of conviction, and, two, the obstructive conduct
10 related to the defendant's instant offense of conviction and
11 any relevant conduct or, B, a closely related offense,
12 increase the offense level by two levels.

13 I am aware that, as we've been discussing, the
14 application note one, obstructive conduct that occurred
15 prior to the start of the investigation of the instant
16 offense of conviction may be covered by this guideline if
17 the conduct was purposefully calculated and likely to thwart
18 the investigation or prosecution of the offense of
19 conviction.

20 Here, admittedly, it's -- there are unusual facts
21 as set out in the presentence report. The investigation
22 clearly started in terms of a -- we'll call it a security or
23 potential threat to Homeland Security as detailed in
24 paragraph 6 as set forth in the presentence report at
25 paragraphs 9 and 10. Agents of the FBI searched the

1 defendant's residence; and in addition to seizing the
2 revolver and ammunition, they also seized ammunition that
3 apparently was something different from the actual gun found
4 present, .410 shotgun shells, and then 92 rounds of various
5 ammunition. That occurred on March the 22nd, 2012. As
6 detailed in paragraph 11, during the search of his residence
7 on that day, Mr. Welter provided consent to search all
8 computers located in the residence, which apparently the FBI
9 did.

10 However, on April 13, 2012, FBI was made aware of
11 the existence of two hard drives that had been located in
12 Mr. Welter's -- that were in Mr. Welter's residence but had
13 not been found during the course of the original search. As
14 we've been discussing, Mr. Welter had sent a letter to an
15 individual asking that that individual locate the hard
16 drives -- or check in a workroom, as I read, and if there
17 are any hard drives to throw those hard drives away.

18 It seems to me at that time there is an
19 investigation involving -- that's clearly known to
20 Mr. Welter and is ongoing with respect to several different
21 areas of conduct, areas at issue, including his possession
22 of the firearms under the circumstances described in
23 paragraphs 5 through 8 in the presentence report.
24 Mr. Welter's efforts to destroy evidence under those
25 circumstances, even though that is unusual, I find is

1 properly classified as obstructive conduct in this case,
2 that is, an effort to willfully impede.

3 I understand Ms. Costner's argument with respect
4 to what might be construed as the benign nature of his
5 comment about destroying hard drives, but I find the
6 destruction of hard drives, one, to be very different from
7 the other acts that Mr. Welter had asked his neighbor to
8 perform on his behalf; that is, watering plants, emptying
9 garbage, setting up phone accounts are all what would fall,
10 at least in my opinion, in kind of a normal maintenance or
11 routine maintenance type category. The destruction of the
12 hard drives, it seems to me, falls into a very different
13 category. My conclusion as to that conduct I find is
14 further supported by the concern the neighbor obviously had
15 in bringing the hard drives to the attention of the FBI.

16 Here, although the hard drives did not demonstrate
17 or show any additional evidence related to the original
18 investigation that had been undertaken, they ultimately did
19 show the presence of child pornography which ultimately led
20 to the second offense of conviction in this case.

21 Alternatively, I find that the obstruction of
22 justice enhancement is properly applied in this case based
23 upon Mr. Welter's testimony as given at the hearing in which
24 he sought to withdraw his guilty plea, that is, after
25 appearing in this court and representing to this Court under

1 oath that he was, in fact, guilty of an offense which had as
2 an element the knowing possession of child pornography.
3 Mr. Welter later appeared and testified in this Court that
4 he was -- or at least he did not believe that he was guilty
5 of that offense based on the evidence that he had seen in
6 the case after the entry of his plea.

7 I find in several respects Mr. Welter's testimony
8 as contradicted by the evidence, that is, his original
9 statements as well as Mr. Chamberlin's testimony with
10 respect to the information he had provided Mr. Welter and
11 the statements that Mr. Welter had made to him in relation
12 to the child pornography offense, and therefore find
13 alternatively that the obstruction of justice enhancement is
14 properly applied in this case.

15 I think in some respects, particularly with
16 respect to the original count, that is, possession of a
17 firearm by a convicted felon, Mr. Welter's candid statements
18 with the Court and his entry of a guilty plea might
19 otherwise support an application of the acceptance of
20 responsibility adjustment. However, in looking at the
21 totality of the circumstances, that is, Mr. Welter's conduct
22 with respect to both offenses in this case, I find that the
23 acceptance of responsibility, Section 3E1.1, should not be
24 applied.

25 However, I do find that as a result of that at

1 least Mr. Welter's partial acceptance in relation to the
2 922(g) offense has not been fully accounted for, and I will
3 consider that factor in terms of a variance or a possible
4 variance in this particular case.

5 Does that resolve the pending objections at this
6 point?

7 MS. COSTNER: Yes, Your Honor.

8 THE COURT: All right. Then, Mr. Welter, I'll ask
9 you at this point in time, have you reviewed the presentence
10 report with Ms. Costner?

11 THE DEFENDANT: Yes, sir, I have.

12 THE COURT: And other than the factors that
13 Ms. Costner has brought to my attention, are there any
14 additional objections?

15 THE DEFENDANT: Could you repeat that, sir?

16 THE COURT: That was a bad question.

17 THE DEFENDANT: Well, I have to read your lips as
18 well to hear what you're saying.

19 THE COURT: Are there any other objections other
20 than what Ms. Costner has brought to my attention?

21 THE DEFENDANT: No, there -- no, Your Honor.

22 THE COURT: All right. You may have a seat. Then
23 I will overrule the objections. I adopt the presentence
24 investigation report without change. In Mr. Welter's case,
25 the resulting -- neither offense of conviction carries a

1 mandatory minimum sentence. The resulting advisory
2 guideline calculation is as follows:

3 A total offense level of 30.

4 A criminal history category of three.

5 A guideline imprisonment range of 121 to 151
6 months. Yes, sir?

7 MR. GREEN: I think his criminal history category
8 history is two given the --

9 THE COURT: Oh, that's right, I forgot. I'm
10 sorry, Ms. Meyers, let me come back to you. With a thirty
11 and a two, where does that leave us?

12 MS. MEYERS: Your Honor, with a thirty and a two,
13 that's 108 to 135. The fine range does not change.

14 THE COURT: All right.

15 A supervised release range of one to three years
16 as to the 12C123 case and five years to life as to the
17 12CR399 case.

18 The fine range does not change. It remains at
19 15,000 to \$150,000.

20 And a special assessment of \$100 as to each count
21 is mandatory.

22 Give me just a second, Ms. Costner. All right.
23 Ms. Costner, will there be any additional evidence on behalf
24 of Mr. Welter?

25 MS. COSTNER: No, Your Honor, no evidence.

1 THE COURT: All right. Then I'll hear from you at
2 this time as to what constitutes a sentence that is
3 sufficient but not greater than necessary taking into
4 consideration the advisory guideline calculation as well as
5 all other factors set forth under 18 USC Section 3553.

6 MS. COSTNER: Thank you, Your Honor. Your Honor,
7 I know the Court has reviewed the presentence report and
8 Mr. Chamberlin's memorandum, and I just want to add a few
9 things to that for the Court to consider.

10 Your Honor, in looking at, first of all, the
11 history and characteristics of Mr. Welter, I know the Court
12 is aware of his criminal history and that it's not
13 insignificant in terms of the actions that caused him to
14 serve a prison sentence about -- of about 25 years, although
15 he did not serve all of that.

16 Prior to that time, though, Your Honor, he had
17 served in the military. He had served in the Marines. He
18 had had some injuries. In talking to Mr. Welter, he feels
19 like even during that period of time, he may have been
20 suffering from some post traumatic stress syndrome and some
21 other mental health issues. Your Honor, I think that is
22 supported by what you see in the presentence report and in
23 the psychological evaluation.

24 Mr. Welter had a very difficult childhood. He had
25 parents who were not very engaged in child-rearing and, in

1 fact, were abusive. His sister verified that. I think the
2 fact that there is no family here today is very telling of
3 that family history. He's not close to his brothers or
4 sisters. They all apparently have disclosed a pretty
5 traumatic upbringing, and it sounds like Mr. Welter really
6 felt the brunt of that and that has followed him throughout
7 his life and has caused some of the mental health issues
8 that I think are before the Court -- or that, you know, in
9 him as he sits before the Court.

10 Having said that, though, Your Honor, there are
11 some good things about Mr. Welter, and one of those is his
12 work history. For somebody that had the type of prior
13 convictions, criminal history that he has, he has -- I think
14 he described himself as God's gift to the mechanical world,
15 and I think that's supported in his work history. Your
16 Honor, he's worked at various auto mechanic shops and tire
17 shops. He's earned a good income. He's apparently been an
18 excellent employee, and he's been a hard worker. He had a
19 home -- has a home that he's in danger of losing at this
20 point, but it was a home that he was living in at the time
21 of his arrest.

22 Really, since his discharge from prison, he --
23 other than one, I think, prior charge that was dismissed, he
24 really hadn't -- there was no other problems with the law.
25 He -- in fact, from talking to him, and I think this is

1 borne out in the investigation materials in the presentence
2 report, prior -- right -- the firearm that was found in the
3 home was taken from a neighbor who had threatened to kill
4 herself. He tells me he kept it in an outbuilding.

5 But then he had a total knee replacement just a
6 few weeks before his arrest. He was engaged in some
7 internet websites involving Muslims. He is Muslim, and he's
8 freely admitted that. He had received some threats from
9 some other folks and was scared, found himself in a pretty
10 disabled position because he had his knee surgery, and they
11 released him home, no family, no one really to care for him.
12 He did have neighbors sort of checking on him, but, you
13 know, a knee replacement is a pretty debilitating type of
14 surgery, and it renders one pretty helpless.

15 THE COURT: Now, I understand the point on taking
16 the gun from the neighbor who is concerned about whether she
17 will use the gun to kill her self, but isn't that story
18 undermined by the presence of other types of ammunition in
19 the house, .410 and 92 rounds of assorted ammunition?

20 MS. COSTNER: There's no other weapon in the
21 house, Your Honor; and, you know, certainly at the time that
22 he was charged with this, the only weapon was the one that
23 was seized --

24 THE COURT: I understand that, but doesn't the
25 presence of various types of ammunition plus an express

1 interest, regardless of who instigated it, in purchasing
2 other firearms suggest this is not a one-time, isolated
3 instance?

4 MS. COSTNER: May I have a moment?

5 THE COURT: You may.

6 (Discussion between counsel and defendant.)

7 MS. COSTNER: And I'm sorry, Your Honor, that's
8 not a point I ever talked to Mr. Welter about. What he
9 tells me is that all came from the neighbor. She gave him a
10 bag that had the firearm and all her ammunition, and that's
11 what she had in the house.

12 Now, did he engage in conversation with this agent
13 or undercover person about firearms? Yes, he did. And I
14 did talk to him about that, and basically what he tells me
15 is that was just a conversation about guns, ammunition. It
16 wasn't, you know, any plot or any disclosure on his part of
17 some desire to have a cache of guns or to, you know, start
18 some kind of terrorism or some kind of problem. He was just
19 talking to another person about firearms and guns and was
20 not intending that to be some conversation to reflect some
21 desire on his part to accumulate a stash of them.

22 And he didn't have a stash of them, he had this
23 weapon, and he had it nearby after his surgery because he
24 was scared and wanted just to have something to defend
25 himself with it. Was that a good decision? You know,

1 obviously not. You know --

2 THE COURT: I can't figure Mr. Welter out. I
3 mean, Mr. Welter in some respects is kind of just like an
4 individual who likes to stir the pot and create trouble. I
5 mean, that -- just do these little things to irritate and
6 get under the skin of other people.

7 On the other hand, Mr. Welter, it seems to me,
8 never is forthcoming about what he's done. He tries to
9 downplay attempting to blow up a law enforcement officer as
10 being kind of first cousin to a prank but an offense for
11 which he received a sentence of 25 years and served 9.

12 He then, while he is in custody on that offense,
13 rewires a vehicle to shock the individual who attempts to
14 start the vehicle; and when a guard attempts to start the
15 vehicle and is shocked, he's sanctioned for that, and he
16 attempts to downplay that by, well, we were just playing
17 pranks on each other, and I didn't know the guard would get
18 in the car.

19 He then changes his religion to Islam, travels to
20 Lebanon; and when the FBI shows up, he starts showing them
21 how adept he is with this .22 pistol that he's got,
22 describes to them how he would like to purchase other
23 firearms, and then comes into court and says I was just
24 holding all this as a good deed for my neighbor who had
25 threatened to commit suicide.

1 I asked my neighbor to destroy hard drives during
2 the course of an FBI investigation, but that was just
3 routine maintenance, and I didn't mean anything by that.

4 So maybe it is true that some of things Mr. Welter
5 does are not the most serious, but Mr. Welter's pattern of
6 conduct of trying to excuse and minimize that conduct is
7 really what troubles me about him. Standing alone, the
8 922(g) offense was a 10- to 16-month. Standing alone, the
9 possession of child pornography is not nearly the most
10 serious of the possession of child pornography offenses, and
11 I can assure you I -- and I will do it today -- I think the
12 computer overstates the seriousness of the offense, and some
13 of these adjustments, in my opinion, need to be reduced.

14 But every time something comes up, Mr. Welter's
15 got an answer that most of the time really doesn't make --
16 ring true, I guess, is the better way to put it. So he
17 manages to escalate, in my mind, what he's done with what he
18 does after he does it.

19 MS. COSTNER: Certainly, he makes some very poor
20 choices, and that's probably an understatement in many ways.

21 But, Your Honor, I know, has reviewed his
22 psychological evaluation, and I think some of the
23 minimization is part of his psychological profile. And I
24 would either venture to say that when one has been the
25 victim of physical and emotional abuse in your home as a

1 child growing up, that tends to make one minimize, and I'm
2 just saying that from experience of dealing with people in
3 that situation. It's hard to accept responsibility, I
4 think, when as a young child you've been beaten and
5 terrorized and abused by your own parents.

6 And so I would contend that his history and his --
7 the psychological testing support some of that -- or what
8 the Court is saying in terms of your evaluation of his
9 behavior, but I'm not convinced that it's willful in all
10 respects, and I think that's based on his history and the
11 testing, Your Honor.

12 And, you know, it is a series of poor choices, but
13 I would say that this is also a man who can function. He is
14 a loner. He lives alone. Clearly, he has no family. Here,
15 but he's worked --

16 THE COURT: He's got some skills.

17 MS. COSTNER: He's got great skills.

18 THE COURT: He's obviously very bright.

19 MS. COSTNER: Great job history. He's got a high
20 IQ. His IQ testing was high. You know, he described to me,
21 and I saw this in the discovery, times when working at Pep
22 Boys -- he observed somebody driving under the influence and
23 he called, and they were arrested. So he apparently
24 reported the Muslim -- or the Islamic person who was
25 threatening him, and he was afraid of that person and made a

1 report about it. So he has been proactive in those aspects,
2 but then he sort of in some ways walks this line that the
3 Court described.

4 But where that puts him -- and, you know, that's
5 the nature and characteristics of Mr. Welter. There's good
6 and there's bad as there are in most people. There just
7 maybe seems to be more extremes.

8 But I think that, you know, what the discovery and
9 the investigation did bear out is that, you know, while this
10 man did have this weapon in his home, and while on this
11 computer there was this very old child pornography -- and,
12 you know, I haven't gotten to the -- you know, just talking
13 about actually the offenses themselves. I've discussed the
14 weapons charge with the Court, but this child pornography
15 was on a hard drive not attached to a computer.

16 Looking at, at least, you know, the analysis, and
17 I'm not a computer expert, but I do have this -- you know,
18 all of it -- the images, it looked like, were in temporary
19 internet files. Then you have this video that was in this
20 AVI file in a different place, not in a temporary file. But
21 it looked to me like some of it may have been accessed maybe
22 in 2009. That may be when he downloaded the hard drive on
23 to that hard drive with a new computer. Maybe it was
24 accessed in 2007, maybe 2002, but it was very old.

25 And even, you know, from the agent that testified,

1 he could only find that the video in his analysis had been
2 looked at one time. That's all he saw support for. And I'm
3 not saying that he testified it had only been looked at
4 once, but he couldn't find any -- or accessed, I guess. The
5 accessing and looking at it may be two different things.
6 You could see it and turn it off and not delete it.

7 But this is a case where this man had on this hard
8 drive where -- was it 140 images, and 75 of them were
9 attributed to one video. So certainly very few images.
10 Very little access, if at all. Very old and in temporary
11 files. Those images were not loaded into My Pictures or
12 some kind of file like that. They were temporary internet
13 files that somebody had to go and actually find on a hard
14 drive. They weren't saved in a little folder or anything
15 like that where you, you know, you might keep your pictures
16 that you want to look at all the time.

17 There was no file sharing software. No evidence
18 that these photos were traded or, you know -- if anything,
19 they may have been -- you know, they were downloaded off of
20 Internet Explorer and in a temporary file, and so I think
21 that takes it sort of out of the realm of maybe what we
22 normally see in these kinds of cases where, you know, people
23 do keep these images or they're sharing them or there's file
24 sharing software.

25 THE COURT: One of my concerns, and I don't think

1 it's a necessarily a fair consideration, though, is that
2 Mr. Welter -- he had two hard drives standing -- apparently
3 standing alone in his house. Now, I don't know,
4 Ms. Costner, what you do with your computers, but usually I
5 have to rely on some kind of expert to come in and wipe a
6 hard drive, and I just get rid of the computers.

7 There's a level of sophistication here that gives
8 me some concern like in the gun case where we've got
9 evidence of possession of gun and multiple types of
10 ammunition and suggestions about interest in buying guns
11 after the offense is committed that there's more here than
12 meets the eye, so to speak. You may disagree. I'm kind of
13 asking the question, but --

14 MS. COSTNER: Well, I would disagree with that
15 because I met with these -- the FBI agents that analyzed the
16 hard drives and the external hard drives and the computers,
17 and, I mean, it seems to me that they -- I mean, they could
18 find no evidence, and, you know, my under -- I'm no expert
19 in computers. I have some working knowledge, but I'm not,
20 you know, by any means con -- would consider myself an
21 expert, but I do enough to know that to -- I remember going
22 to a seminar with Tom Cochran who basically spoke and said
23 you have to shoot one six times to really get rid of all the
24 images and everything on a hard drive. I mean, it stays
25 resident. So I think if they couldn't find anything on

1 those hard drives other than what is before the Court, it
2 just wasn't there.

3 THE COURT: I have to say -- I'll hear from
4 Mr. Green, but I think that's a relatively fair point. I
5 mean, Mr. Welter's done some rather -- clever may not be
6 quite the right word in terms of hiding his conduct, but I
7 think it would be unfair to Mr. Welter to speculate about
8 what else might be out there in light of your argument.

9 MS. COSTNER: I do. I think that they analyzed
10 it, I'm sure, very, very thoroughly, and I have no doubt
11 that, you know -- given the fact that, you know, when he was
12 arrested -- I looked at the archived, you know, video from
13 the news organizations. They thought apparently that they
14 had some terrorist who, you know, was plotting to overthrow
15 the Government almost, and certainly none of that was on the
16 hard drive either, and I'm sure they had every incentive to
17 comb through those computers with the finest of fine tooth
18 combs at that point.

19 Having said that, Your Honor, that sort of
20 transitions me into talking about the seriousness of the
21 offense and the punishment and that sort of -- that part of
22 3553, and Mr. Welter did want me to let the Court know that
23 those news interviews have been very detrimental to him.
24 He's been punished in some ways. And I'm not saying that
25 the Court should substitute this for any punishment, but

1 just to let the Court know.

2 Mr. Welter lost almost every friend he had had
3 based on those interviews. He -- you know, people distanced
4 themselves from him. He feels that even when he serves
5 whatever sentence the Court gives out, anybody that Googles
6 him or goes online to search and sees those interviews may
7 believe that he, in fact, is a terrorist, and he may never
8 get employment again, and he has suffered from that and
9 feels terrible about it, and it is of great concern to him.

10 Your Honor, the guideline range for Mr. Welter is
11 very high, and I know that part of the five-point swing is
12 the obstruction and acceptance of responsibility. But even
13 without that, we're talking about a very large sentence for
14 what I would contend -- and I'm really talking more about
15 the child pornography charges because I know what the
16 guidelines are with the gun charge -- for images that are
17 old, three years at the minimum, probably older than that
18 based on what I see; images that are in temporary files, not
19 accessed; images that were not part of file sharing
20 software; images on a hard drive not even hooked up to a
21 computer; and no evidence that on any of the computers that
22 he was currently using that these -- that he had any type of
23 this type of material on that computer. So I would ask the
24 Court to take all of that into consideration in fashioning a
25 sentence.

1 And, you know, Mr. Chamberlin did set out sort of
2 a proposed range of 41 to 51 months in his position paper.
3 I would contend to the Court that that in light of all the
4 3553 factors is a reasonable sentence, and I would ask the
5 Court to consider a sentence at that range.

6 And let me just make sure. Oh, and just to let
7 you know a couple other things about Mr. Welter that I
8 wanted to point out. He is -- he does have some medical
9 considerations. He's had this total knee replacement. He's
10 having some issues with that. He came here today on a cane.
11 He does suffer from migraines and some other health, spine,
12 head injuries.

13 In sentencing him, Your Honor, we would ask the
14 Court to, first of all, recommend a designation to a place
15 for mental health treatment. I think Mr. Welter would like
16 to get some assistance with some of the post traumatic
17 stress and the other issues that may have been raised in the
18 psychological evaluation.

19 I would also point out in -- and I meant to say
20 this in the psychosexual evaluation, Dr. Hirsch in
21 evaluating Mr. Welter found that he is, I believe, a low
22 risk -- oh, he may have been low to moderate.

23 THE COURT: Low moderate, I think.

24 MS. COSTNER: No evidence -- but I would contend
25 that's more based on the materials than, you know, the

1 testing with Mr. Welter. No evidence that Mr. Welter is
2 attracted to children, is a danger to children, is someone
3 that is aroused by these types of images. You know, as I
4 said, a high IQ and some other psychological issues, but no
5 evidence that Mr. Welter has some type of pedophilic sort
6 of, you know, inclinations at all. But Mr. Welter would be
7 interested in psychological assistance just to deal with
8 some of the issues that have followed him throughout his
9 life from his childhood.

10 Also if the Court could recommend a medical
11 facility to help him further with the knee issue, and he
12 does have some back and head problems and would be very
13 interested in any medical care that he could avail himself
14 while in the Bureau of Prisons.

15 THE COURT: All right.

16 MS. COSTNER: Thank you.

17 THE COURT: Mr. Green?

18 MR. GREEN: Well, Your Honor, I guess we've got,
19 you know, two issues, two offenses. One is the firearm
20 offense. I think that necessarily implies looking at what
21 kind of felon was he? You know, we've kind of stripped away
22 with *Simmons* and a bunch of other stuff. I guess we got rid
23 of a bunch of nonserious felonies, you know, or at least
24 that's one way of looking at it.

25 But what he was convicted of was extremely

1 serious. He attempted to murder a law enforcement officer.
2 I know the Court talked some about his -- you know, kind of
3 his approach to it, that it was a prank. In one sense he
4 does seem to be talking out of that side of his mouth.

5 But when he gets in with Dr. Hirsch in the
6 psychosexual evaluation and they discuss the criminal
7 history, it's ten times worse than that. He blames the
8 trooper, right? The trooper was harassing him. The trooper
9 had caused his divorce -- his wife to come home and want a
10 divorce because she had been stopped outside. He says,
11 alternatively, that he lashed out at the trooper -- this is
12 on page 5 at the bottom. He admits that his intention was
13 to kill him, to murder a North Carolina State Highway
14 patrolman. And then kind of the penultimate line, page 6 at
15 the top of that page, in the doctor's opinion he seemed
16 ambivalent when asked if he felt bad about what the officer
17 experienced. That is, of course, getting in your car and
18 having pipe bombs go off and nearly kill you, and his answer
19 was that the officer got a serious wake-up call.

20 Now, we talk about history and characteristics of
21 people, but, I mean, you have an individual who uses a
22 sophisticated, premeditated planned way of killing someone,
23 and his opinion is, well, he got a wake-up call, and that
24 doesn't seem to have been -- that kind of approach to life
25 doesn't seem to have been assuaged by any life experience or

1 whatever because we get in the situation, and it's well, you
2 know, I had the gun, but that was really to protect my
3 neighbor, but I had it for seven years. I had it readily
4 available when the person comes to the door and could show
5 them and demonstrate. I have other ammunition of different
6 types in the house, but that's really -- it really
7 doesn't -- you know, that relates more to my neighbor and
8 her problem. That's his approach. Oh, I want to discuss
9 about this other gun that I may purchase, but really this is
10 more about my neighbor.

11 He obstructs justice, as the Court has so found,
12 both as to the ongoing investigation and the seriousness of
13 that ongoing investigation, and he attempts to -- really,
14 it's worse because he attempts to elicit someone unknowingly
15 in his plot to get rid of evidence that he knows is wrong.
16 He says -- we have a whole series where I didn't plead
17 guilty. I don't know anything about this stuff. Judge, you
18 really ought not to consider me and -- because I really
19 didn't know about that stuff; and were I to go to trial,
20 that would be an argument, even though he admitted that he
21 did, in fact, know it before Judge Schroeder and essentially
22 admitted it before you again.

23 When we look at his psychological history as it
24 relates to the child pornography, he's adjudged a low to
25 moderate risk based on what? Self-reporting about what his

1 own attraction to children when he denies that he did that
2 now, and he denies it to Dr. Hirsch. That's kind of --
3 that's kind of -- that's not a surprise result one would
4 think. Hey, he denies the typical history and
5 characteristics associated with pedophiles --

6 THE COURT: What would you point to as evidence
7 that he constitutes a higher risk than that based on what's
8 present in this case in terms of pedophilia?

9 MR. GREEN: Well, I think he's a high risk to be
10 an offender, period, a violent offender. I consider --

11 THE COURT: But my question relates to pedophilia
12 because you disagree with Dr. -- or you express concern
13 about Dr. Hirsch's opinion --

14 MR. GREEN: Yes, sir.

15 THE COURT: -- of a low to moderate risk in that
16 category.

17 MR. GREEN: To the extent that that opinion is
18 based on Mr. -- Defendant Welter's self-reporting about
19 anything at all, then, yes --

20 THE COURT: It's based on self-reporting, testing,
21 and Dr. Hirsch's opinion on that constellation of factors.

22 MR. GREEN: I understand that. The testing itself
23 is self-reporting. I mean, I don't want to belittle
24 Dr. Hirsch or belittle psychology or psychiatry in general,
25 but we don't have a test yet that's objective that says we

1 can hook you up, and that's going to tell us you're going to
2 be a pedophile in the future.

3 THE COURT: You are challenging his findings.

4 MR. GREEN: I am.

5 THE COURT: All right. So what evidence is there
6 in this case that would suggest he is a higher than low to
7 moderate risk in terms of pedophilia?

8 MR. GREEN: Well, I think you're misunderstanding
9 my point. If we have an assessment based on certain
10 factors, which include his self-reporting, in which during
11 that self-reporting he, in fact, denies committing the
12 offense in question --

13 THE COURT: Which is something Dr. Hirsch knew
14 too, didn't he?

15 MR. GREEN: He did, no question. But I think you
16 can certainly look at that in a little more skeptical eye as
17 opposed to a defendant who came in and said yes, because of
18 some prior abuse, I've had a fleeting interest in child
19 pornography, and that is the circumstances of what happened
20 here.

21 THE COURT: So disregard that testing entirely?
22 Where does that leave you?

23 MR. GREEN: Well, I don't know if you disregard it
24 entirely, but, again, my understanding of these
25 circumstances as it's described in the thing is the testing

1 is comprised in many respects of self-reporting of a
2 constellation of symptoms or I like children, I don't like
3 children. We look at prior events in his past. Did he
4 abuse, you know, animals and so forth.

5 So as part of that criteria, that is, I am going
6 to honestly give you information about the way I feel about
7 things, he's denied it. I mean, denied it completely. And
8 Dr. Hirsch himself says, hey, look, in the future, on
9 page -- well, in the PSR notes, hey, part of his criteria
10 for being successful and this -- because he's a low to
11 moderate risk, and what I'm suggesting is appropriate, he's
12 got to admit his conduct. That's noted on in the PSR as
13 well.

14 I mean, where are we going to -- what's our hope
15 there that he's denied it at every turn now? What's our
16 hope that this gentleman is going to say you know what? I
17 do have a problem as it relates to child pornography. If we
18 look at the circumstances in which -- and I understand
19 Ms. Costner's example, and maybe part of this is just I kind
20 of in one respect look at this maybe like somebody -- a
21 member of the public would. I don't do these cases all the
22 time. You know, the Court, I know, has many, many, many
23 more child pornography cases, and I know just by anecdotal
24 evidence that there's probably people who have thousands of
25 images.

1 THE COURT: There are, which is the reason I asked
2 my question. I mean, even if I kick out Dr. Hirsch's report
3 and say it's unreliable because Mr. Welter doesn't tell the
4 truth, we're talking about 145 images here that at least on
5 the evidence before the Court I don't know that anything was
6 downloaded or looked at prior to -- after 2009, and I'm not
7 sure about the time frame. So I'm not sure what the basic
8 evidence is in the case to suggest that Mr. Welter is a high
9 risk or something more than low to moderate, at least by
10 comparison to other cases.

11 MR. GREEN: Well, I guess it's higher risk of
12 what? That's one question.

13 THE COURT: I understand that. But you are the
14 one that started talking about pedophilia, and that's the
15 part -- I understand the risk of future criminal conduct.

16 MR. GREEN: Yes, sir.

17 THE COURT: But it was your point related to
18 pedophilia, and that's the one I don't understand because
19 even without Dr. Hirsch's opinion, without Mr. Welter's
20 statements, take all that out, assume he's not telling the
21 truth, it's not the most egregious of these offenses that I
22 have seen, which is where I'm struggling to say he's a high
23 risk on that particular offense.

24 MR. GREEN: I understand. I don't -- and I
25 think -- I don't want to misstate -- what I'm saying here is

1 I don't come into court and say I can predict the future. I
2 quite honestly believe as relates to his danger to children
3 to sexually abuse them -- I don't know. I don't think
4 Dr. Hirsch is particularly helpful with -- his assessment
5 particularly aids the circumstances when you have a
6 defendant in this case who is denying the very conduct which
7 he is self-reporting on.

8 So, yeah, I think we should take it off, and the
9 point I was trying to make is, again, not being as
10 experienced as the Court, I mean, I don't know how many
11 pictures of an 8-year-old or a 7-year-old or a 12-year-old
12 engaged in some sexual act where an adult male ejaculates
13 into her mouth, I mean, how many do we have to have? I
14 certainly understand that there's some people who come into
15 court with 35,000 of them.

16 THE COURT: I mean -- exactly.

17 MR. GREEN: Right.

18 THE COURT: There's -- so the point is sometimes
19 the only yardstick I have is by comparison to other cases,
20 and this one in terms of that particular conduct is not even
21 close to a number of cases, and I don't know what to
22 conclude from that. I understand your point about
23 Dr. Hirsch, but he's got some expertise. I've seen his
24 reports before. Low to moderate is pretty common on a
25 simple possession only offense, almost regardless of what

1 the defendant says.

2 I don't see any evidence here of an approach of a
3 live human being, of any unusual associated conduct, and so
4 I'm not sure how to find anything other than a low to
5 moderate risk, frankly.

6 MR. GREEN: Of pedophilia.

7 THE COURT: Um-hum.

8 MR. GREEN: But not necessarily law breaking.

9 THE COURT: No, the other conduct is a different
10 story.

11 MR. GREEN: Right. And I guess also, Your Honor,
12 I can't predict if he's going to get on a computer again.
13 Obviously, part of your judgment is going to be that he does
14 not. But I think sometimes -- again, I am removed from
15 doing these cases everyday, but the offense itself is the
16 offense itself. I mean, you have victim impact statements
17 as part of the PSR. I mean, being re-victimized every time
18 someone is in their trailer in Concord and views again your
19 father sexually abusing you, I think sometimes we all lose
20 sense of that, that these continual downloading creates a
21 market for these individuals. Why does that stuff continue
22 to appear on the internet? Because there's an appetite for
23 it, and therefore it creates basically an incentive for
24 people to abuse children.

25 So, again, I don't do these cases all the time, so

1 maybe my -- "outrage" is not the right word, just extreme
2 discomfort with the topic.

3 THE COURT: I mean, if you're not outraged by the
4 material, then you're not human.

5 MR. GREEN: Right.

6 THE COURT: That's part of the problem. But I
7 have some other responsibilities both with respect to the
8 victims and the general public as far as Mr. Welter's future
9 conduct.

10 MR. GREEN: Fair enough.

11 I think his future conduct -- again, we have an
12 individual convicted of in the past extremely serious crime.
13 He minimizes it. He blames others. He again violates the
14 law by possessing a firearm, which is, I think, more serious
15 in his case because of the nature of his prior conduct. He
16 minimizes it. Says it's someone else's fault. It's because
17 my knee was hurt. Then he engages in obstructive conduct
18 and denies any responsibility for the more serious of the
19 offenses.

20 In toto, Your Honor, I think looking at the 3553
21 factors, a guideline sentence is appropriate.
22 Mr. Chamberlin when he made that prediction was assuming
23 that none of the enhancements were going to apply, and I
24 think a guideline sentence is appropriate given this
25 particular defendant and his nature and characteristics.

1 THE COURT: All right. I am going to hear from
2 Mr. Welter, and then we're going to take a short break, and
3 I'll come back and give you my ruling in the case.

4 And while we're on break, Mr. Green,
5 Mr. Ramaswamy, I mentioned this earlier, and Mr. Ramaswamy
6 is familiar with it. I do, in today's technological age,
7 have concerns about plus two on the computer because that's
8 about all we see in 100 percent of the offenses. Here, the
9 number of images is not significant. The types of images
10 given the history of some of this viewing of child
11 pornography materials, while alarming, in isolation in terms
12 of comparison to other defendants, I think it's very serious
13 in this case. The plus four sometimes causes me some
14 issues. So Mr. Ramaswamy can give you some background if
15 you want to be heard further on that. When I come back,
16 I'll be happy to hear from you briefly.

17 Mr. Welter, you're not required to say anything.
18 If you choose to remain silent, your silence will not be
19 held against you in any way whatsoever, but you do have the
20 right to address the Court before any sentence is imposed;
21 and if you wish to address the Court, now is the appropriate
22 time.

23 THE DEFENDANT: Thank you very much, Your Honor.

24 First off, Your Honor, I find I must address my
25 crime from 1986 first because this is the basis for

1 everything that has happened from that point on in my life.

2 THE COURT: Must address your first?

3 THE DEFENDANT: My crime in 1986.

4 THE COURT: Oh, the crime in 1986.

5 THE DEFENDANT: Yes, sir, must address it. There
6 is the opinion I'm given that I think this is a flippant,
7 flyby -- you know, just this little joke, and I don't take
8 it as a joke. Every time I try to have a relationship with
9 someone, I have to tell them of this crime. Every time I
10 apply for a job, I have to tell them about this crime.
11 Everything that goes on in my life, I have to tell them
12 about that. It affects my life in ways today that I cannot
13 communicate. It is an extreme load on me, and I have
14 extreme guilt about it, so I don't tell people about it. I
15 am very ashamed of it, and I cannot reiterate that enough to
16 this Court.

17 At the time for whatever reasons I've justified it
18 to myself, I felt I was justified. I was wrong. I have
19 admitted that, I have lived with that, I have dealt with
20 that, and I do not want this Court or the prosecutor to make
21 light of my own personal feelings about this. I have to --

22 THE COURT: Nobody's making light of your
23 feelings, Mr. Welter, but did you go in and tell Dr. Hirsch
24 there wasn't that much to it.

25 THE DEFENDANT: Yes, Your Honor, I did, and it is

1 a tendency when you do these things to try to blow them off,
2 to minimize them, because to communicate that I tried to do
3 something to someone for the reasons I did it, it doesn't
4 wash with me, okay. I'm lying to myself if I try to say I
5 was legitimate. I wasn't legitimate, and I know that.

6 So when people say, well, what about this, you try
7 to blow it off because you say -- you just don't like facing
8 it, and I have to face it constantly. Some people, you
9 know, in prison pat you on the back and say you're a hero.
10 I am not a hero. I don't want anybody ever saying that
11 about me. I mean, I tell them that. I am not proud of
12 that. People try to say -- oh, they come up and ask about
13 explosives, they ask about how you do this, that, and I say,
14 dude, I don't even want to get into that because that is a
15 no-win proposition.

16 THE COURT: I understand your point on that,
17 Mr. Welter. Anything directly related to these offenses you
18 would like to say?

19 THE DEFENDANT: Okay. The proposition has been
20 made that for some reason -- or basically that the firearm I
21 had in my possession was because of certain factors, and I
22 just want to go over this very quickly. My neighbor brought
23 the weapon to me. I took it from her because I felt she
24 would commit suicide. But I, the next day, took and put it
25 in her shed so she would possess it because I knew I should

1 not have the this weapon. I did not want this weapon. She
2 brought a bunch of ammunition and things like that. I took
3 the entire thing and said here, take this back, put it in
4 your shed, this is your possession, I don't want it. That
5 was like eight or nine years ago. It stayed there. I never
6 had any fascination with it at all.

7 The only reason I brought it into my house was
8 because I had already contacted law enforcement -- and this
9 may sound like a copout, but I had -- concerning threats --
10 international threats. I had contacted the FBI and written
11 them a letter saying this man is threatening me, here is
12 what he has said, he's tried to hire a hit man, I think,
13 because that was in the text, and I feared from my life. I
14 never heard back from the FBI. That was in November of
15 2011.

16 When I had my knee operated on, I'm basically
17 debilitated. I'm double and triple dosing Vicodin,
18 Percocet, whatever, for the pain, and I for whatever reason
19 felt my life was not safe. There's an old saying "You dial
20 9-1-1, all it does is tell them where the body is." I felt
21 I had to protect myself. I got the gun. I had it in my
22 house merely to protect myself. That was the only thing I
23 wanted to do.

24 THE COURT: So what was there about the undercover
25 FBI agent you felt you needed to protect yourself from?

1 THE DEFENDANT: He had -- okay. Here is a man who
2 comes on my rear deck. He is obviously lying to me about
3 why he is there. I don't know who this person is, but I get
4 a vibration from him he's lying to me about something. He's
5 telling me he was moving to the area. He had X amount of
6 dollars in exact amount. He was looking to buy a trailer
7 that wasn't even for sale. He's very clean cut. He's very
8 educated, but he says he works in construction. Nothing
9 about this agent jibed. He was throwing out alarm bells. I
10 almost called 9-1-1.

11 But instead, he starts -- he says "I noticed a
12 Marine Corps sticker on the back of your van. Were you in
13 the Marines?" I said "Yes, I was in the Marines." He said
14 "Well, do you like to shoot? I'm looking for a shooting
15 range," and the conversation went on to firearms. I'm
16 thinking to myself this man is either 100 percent here, you
17 know, just talking about this, or he's trying to find out if
18 I'm armed and if I'll protect myself. At that juncture I
19 figure I'll just show him I've got a gun, and that is the
20 problem. I went and got the gun and said, "See, I've got a
21 gun, here's how it works," etc., etc. Then he leaves and
22 says "I'll see you later. Hopefully, I'll be your
23 neighbor." I put the gun back in my home not knowing this
24 is an undercover agent.

25 But this wasn't the first time the FBI had been in

1 my home. The first time the FBI came to my home was in
2 May of 2011 when they interviewed me about my trip to
3 Lebanon.

4 THE COURT: All right. Now, a lot of these facts
5 I'm aware of, Mr. Welter, so if there's a point here --

6 THE DEFENDANT: There seemed to be some confusion
7 about when each of these things happened. The FBI first
8 came to my home, and then the undercover agent came 10
9 months later. It was two totally separate events.

10 This is why I was talking about he said he wanted
11 to talk about guns, target shooting, things like that. When
12 I was in the Marine Corps, I was a very good shot, and I did
13 a lot of target shooting and a lot of stuff like that, and
14 I've always -- I would like to get back into it, but I can't
15 because I have a felony record; I can't own a firearm. So
16 that was the reason why we were discussing this and one of
17 the reasons why I showed him the gun in the first place.

18 I was scared of him, although I wasn't going to
19 let him -- because I'm pretty macho, and I try to be pretty
20 stoic about these things. Like I said, I almost called
21 9-1-1 on the guy. He was that obviously not kosher, for
22 lack of a better word. That's why I showed him the weapon.

23 I had no desire to hurt anybody. I really didn't
24 want to have the gun in the house in the first place, but I
25 felt it was the only way to protect myself in view of the

1 incidents that had happened on the internet and people
2 communicating things to me such as pictures of my home
3 closeup on a website, on the internet, pictures of my
4 license plate numbers, my driver's license picture on the
5 internet on a website. How did it get there? Out of my
6 computer. How did they get into my computer? I've got a
7 great firewall. I have no idea.

8 This had been going on for about 10 months. The
9 level of suspicion and paranoia gets to be a little bit
10 unsettling sometimes with this. You add in the amount of
11 drugs -- and I don't like to make an excuse like that, but I
12 was double dosing the pain pills, I really was, because I
13 was in a lot of pain, and I had to move around by myself. I
14 had no choice.

15 I made a mistake. I should not have brought the
16 gun into my house. I know that. I have no excuses for
17 this. There are reasons I did things. At the time they
18 seemed legitimate. Hindsight's always 20/20. If I had my
19 choice, I would have asked a state trooper or a highway
20 patrol -- or a county sheriff to park in my front yard
21 rather than do that again. At the time -- people say, you
22 know, you're making excuses. I'm not making excuses. I
23 felt I had no other choice. Otherwise, I would have never
24 done it.

25 We move forward to when I'm arrested and this

1 obstruction. The FBI interviewed me for five hours in
2 Charlotte and discussed a lot of things with me.

3 THE COURT: Mr. Welter?

4 THE DEFENDANT: Yes.

5 THE COURT: This is not the time to testify about
6 things I've already ruled --

7 THE DEFENDANT: I know, Your Honor.

8 THE COURT: -- upon.

9 THE DEFENDANT: Okay.

10 THE COURT: So if you've got anything that I need
11 to consider in terms of your sentencing --

12 THE DEFENDANT: Yes, Your Honor. The FBI has had
13 three interviews with me. At every interview, I have been
14 as forthcoming and as honest and informative as I possible
15 can. I've held nothing back from them. That's the first
16 thing.

17 The second thing is, as Ms. Costner -- as she put
18 forward, when I got out of prison in 1995, six days after I
19 got out of prison, I had a job. Six weeks after I got out
20 of prison, I had my own apartment. Six months later, I was
21 master certified before other certified technicians on top
22 of it in the automotive field. And about eight years after
23 I was out, I owned my home, my cars, and everything else. I
24 was driven to do this. I took myself from \$130 in my pocket
25 to success, and I did it by being very hard charging, very

1 focused on what I was doing, and staying out of trouble.

2 I don't use drugs. I never have. I don't drink.

3 I don't stay around people who can get me in trouble. I try

4 to avoid that like the plague, which is why I accepted -- or

5 started getting into Islam -- into the religion of Islam.

6 Curiosity led me to research it. I found out it reflected

7 my theological beliefs, which is why I accepted it. But one

8 of the things you do when you accept religion is you have to

9 know everything that's going on about it. There's a lot of

10 study, a lot of internet time, maybe even going to a country

11 across the water to find out what the people are actually

12 like and what the culture actually says and does, and this

13 is why I went to Lebanon, not to --

14 THE COURT: You're not being sentenced here today

15 for any religious beliefs --

16 THE DEFENDANT: I know. That is a precursor --

17 THE COURT: -- nor travel.

18 THE DEFENDANT: -- to what I'm going to say. My

19 intention has never been to hurt anybody or to follow what

20 people would call radical Islam. That's what I was getting

21 to.

22 Concerning the child pornography, I pled -- as I

23 have communicated before, when Mr. Chamberlin first told me

24 about these things, I suspected there was possibly -- it

25 could possibly have been there because of my activities

1 online and people bringing things in. You tag it, link it
2 in a chat room, and you go someplace, and you don't know
3 what's there. I thought there might have been a possible
4 link. I never saw any of this material, not that I can
5 remember.

6 Be that as it may, it exists. Whether I like it
7 or not, whether I want it or not -- and I don't want it.
8 The stuff is pure poison. It destroys everything it
9 touches. Whether that actually is there is the factor. And
10 when I saw the original what they call discovery, they said
11 there was five files, only five, and Mr. Chamberlin said
12 this basically says you're guilty. I said, yeah, if it's on
13 the computers, I'm guilty. I don't remember it, I cannot
14 rectify it, but I'm guilty because of that. That is the
15 reason why I pled guilty.

16 But when I thought about it, I knew that there had
17 to be something more, and I kept demanding evidence; and
18 when I saw the evidence, then I could say, at least with a
19 clear conscious to myself, that there were other
20 considerations as to how it got on there. People want me to
21 say I went here, I went there, did this and did that, to get
22 this stuff on my computer. The files say opposite and
23 different from that. I say different from that.

24 It doesn't matter. At this juncture, it just
25 doesn't matter anymore. I take responsibility for what's on

1 these hard drives because they were in my possession. I'm
2 supposed to know what's on them.

3 THE COURT: Did you knowingly possess child
4 pornography?

5 THE DEFENDANT: Sir?

6 THE COURT: Did you knowingly possess child
7 pornography?

8 THE DEFENDANT: I possessed the hard drives. The
9 child pornography was on it.

10 THE COURT: Did you knowingly possess child
11 pornography, yes or no?

12 THE DEFENDANT: I never saw these images. They're
13 there --

14 THE COURT: Anything further, Mr. Welter?

15 THE DEFENDANT: They're there, and that's all I
16 can say, Your Honor. I have to be honest. If I had seen
17 them, I'd say, yeah, I saw them, and I didn't, and I just
18 blew it off. I never saw them. And that's the file I
19 showed to you. I'm sorry I can't be more thorough than
20 that.

21 THE COURT: Were you being honest --

22 THE DEFENDANT: Absolutely honest, Your Honor.

23 THE COURT: Listen to my question. Were you being
24 honest with Judge Schroeder at your Rule 11 guilty plea?

25 THE DEFENDANT: Given the level of information I

1 had --

2 THE COURT: No, sir. Were you being honest --

3 THE DEFENDANT: Yes, sir, I was as honest as I
4 could be.

5 THE COURT: All right. Anything further?

6 THE DEFENDANT: No, Your Honor. Thank you very
7 much.

8 THE COURT: We'll stand in recess for 10 minutes.

9 (At 11:05 a.m., break taken.)

10 (At 11:17 a.m., break concluded.)

11 THE COURT: All right. Mr. Green, did you want
12 to be heard any further on my comments about the computer
13 and the images?

14 MR. GREEN: No, sir.

15 THE COURT: All right. Well, in Mr. Welter's
16 case, there are certainly some difficulties presented in
17 terms of determining a sentence that is sufficient but not
18 greater than necessary. Obviously, there is one offense,
19 the 12CR123 offense, I think, if I've got my case numbers
20 correct, possession of a firearm by a convicted felon, that
21 is a relatively straightforward case for the most part.

22 As I noted earlier in my comments to Ms. Costner
23 during the -- we had the benefit of a full presentence
24 report having been prepared at that particular point in
25 time, and because of the operation of the guideline

1 calculation as well as the application of acceptance of
2 responsibility, Mr. Welter ended up at a Level 12 and,
3 roughly speaking, under the old guideline calculation, a 10-
4 to 16-month guideline range. I think it would have been a
5 twelve and a three -- let's see, a ten and three -- 10 to 16
6 months. With the removal of the point for -- the criminal
7 history point, that would have dropped Mr. Welter to, I
8 think, a ten and a two or an eight to fourteen months as the
9 guideline -- applicable guideline range in that case.

10 After hearing Mr. Welter's testimony as well as
11 his allocution to the Court and looking at his pattern of
12 conduct in terms of minimizing his own conduct, quite
13 frankly, I find it very difficult to believe any of what
14 Mr. Welter offers as mitigating circumstances in terms of
15 his possession of the firearm charge in this case and would
16 otherwise as to that offense, after hearing Mr. Welter and
17 his minimization, I would be inclined to impose a sentence
18 which would reflect essentially a slight variance as to that
19 offense, and that is an 18-month sentence as to the 12CR123
20 case.

21 I know I'm going about this a little differently
22 because the guideline range is 108 to 135 months, but in
23 terms of explaining the sentence that I am imposing here, I
24 think it's a little easier for me to look at these two
25 offenses and the 3553(a) factors in terms of the two

1 separate offenses, at least at the start.

2 The child pornography case presents a very
3 different circumstance; that is, Mr. Welter has continued
4 throughout the course of that case, at least following his
5 plea of guilty and disclosure of the presentence report,
6 offered varying statements to the Court in terms of his
7 conduct in that case. After originally under oath admitting
8 the elements of the offense and in essence accepting
9 responsibility for the offense, Mr. Welter has offered a "I
10 don't really think I did that" and not at all persuasive
11 comments about things he does not recall about those hard
12 drives, all of which are significantly undermined both by
13 his original plea as well as his efforts to destroy -- have
14 the hard drives destroyed.

15 Quite frankly, if there wasn't anything
16 incriminating on the hard drives, why the urgency in having
17 a neighbor go over into the workroom and destroy the hard
18 drives? I find from the evidence before the Court that
19 Mr. Welter did, in fact, know what was on those hard drives
20 when he sent that letter, at least it appears to this Court
21 that he did by the fact, A, it doesn't appear there was
22 anything else incriminating on those hard drives, and, B, he
23 sought to have those hard drives destroyed.

24 So in looking at the guideline calculation as is
25 set forth in the amended presentence report, the child

1 pornography offense after application of the obstruction of
2 justice and denial of acceptance of responsibility results
3 in a base offense level of thirty, a criminal history
4 category of two. And, ultimately, the firearm offense
5 results in no upward adjustment. So the thirty and a two,
6 at least as I read the presentence report, all flows from
7 the child pornography offense.

8 I do -- it is very common in these cases -- as a
9 matter of fact, it almost occurs all the time now for a plus
10 two to be -- occur for use of a computer. I have, as I've
11 expressed many times, very mixed feelings about a computer.
12 It certainly in terms of interstate commerce has a
13 significant effect on state commerce and availability
14 through file sharing to these types of materials. On the
15 other hand, it makes this material significantly easier to
16 access in this day and time, and I'm not convinced in every
17 case, including Mr. Welter's, that the two-level increase
18 corresponds to -- I guess what you would say the implied
19 increase in culpability in the commission of the offense.

20 So a thirty and a two, if I remove the two levels
21 for use of a computer, we'd end up at a twenty-eight and a
22 two, that is 87 to 108 months. In this case it seems to me
23 that the number of images is not significantly alarming to
24 suggest further dangerousness to the public in terms of any
25 pedophilia or child victim or abuse offenses. But on the

1 other hand, Mr. Welter's conduct of committing offenses and
2 then minimizing those offenses does cause the Court
3 significant concern.

4 So I am finding that a sentence of 70 months for
5 Count One -- or for 12CR399 is sufficient but not greater
6 than necessary looking at the guideline range as well as the
7 number of images. I recognize that that -- the total
8 sentence I will impose, that is, a sentence of 88 months is
9 a 20-month variance from the low end of the guideline range.
10 But in terms of Mr. Welter's conduct in looking at the --
11 I'll explain it further in just a second, but looking at the
12 total conduct in these two separate offenses, I find that a
13 sentence -- that sentence, that is, 88 months, is sufficient
14 but not greater than necessary.

15 The two -- looking specifically at the 3553
16 factors as those factors relate to the two offenses of
17 conviction, both the possession of a firearm under the
18 circumstances of this case, that is, Mr. Welter's past
19 criminal history as well as his demonstration of the firearm
20 to the undercover officer, the presence of other ammunition,
21 and Mr. Welter's express interest in purchasing other
22 firearms make this, in the Court's mind, a very serious
23 offense.

24 As I have indicated, the child -- the seriousness
25 of the child pornography offense, even looking at it in

1 tandem with the commission of another offense, does not
2 strike the Court as the most serious of the child
3 pornography offenses, but I say that fully recognizing, as
4 Mr. Green has argued, that the materials themselves as well
5 as the continued damage to the victims of that crime, that
6 is, the individuals who are filmed in -- or photographed in
7 those child pornography cases just simply cannot be
8 overstated in terms of the seriousness of the offense.

9 Mr. Welter has a very unusual history. He has a
10 substantial history of military service, even though it
11 ended in less than honorable circumstances; and in spite of
12 whatever disadvantages Mr. Welter may have faced by the
13 serious felony conviction earlier, he has managed to
14 maintain a very good employment history.

15 I do find in light of all those factors that a
16 sentence -- that a total sentence in this case of 88 months
17 followed by, as to the 399 case, a period of 15 years of
18 supervised release is sufficient but not greater than
19 necessary to -- on the terms and conditions set forth in the
20 presentence report.

21 I find -- Mr. Welter, you're going to have to
22 change the way you do things. You may be smarter than this
23 Court, you may be smarter than some of the people you are
24 around, but you will not be smarter than the collective
25 wisdom of the probation officer during the period of

1 supervised release, and you are simply going to have to be
2 straight up, candid, and honest with the probation office
3 during the period of supervised release.

4 I recognize that that sentence constitutes a
5 variance from the guideline range, but in Mr. Welter's case,
6 as I have indicated, both the types of images as well as the
7 use of the computer, at least in the Court's opinion,
8 sometimes overstate the seriousness of a -- I hesitate to
9 say "simple," but an offense that involves solely the
10 possession of child pornography materials.

11 So that's the sentence that I intend to impose.
12 Ms. Costner, do you wish to be heard further on that
13 sentence?

14 MS. COSTNER: No, Your Honor.

15 THE COURT: Mr. Green, I recognize that's
16 different from what you urged on the Court. I'll hear from
17 you further if you wish to be heard.

18 MR. GREEN: No, Your Honor.

19 THE COURT: All right. Mr. Welter, if you will
20 stand, please, sir.

21 In Count One, Case No. 12CR123, it is hereby
22 ordered that the defendant is committed to the custody of
23 the Bureau of Prisons for a term of 18 months followed by
24 three years of supervised release. A special assessment of
25 \$100 is mandatory, is hereby imposed, and is due and payable

1 immediately. A fine is waived because of the defendant's
2 inability to pay, and restitution is not imposed as to
3 count -- as to the count in this case.

4 As to Count One of Case No. 12CR399, the defendant
5 is hereby committed to the custody of the Bureau of Prisons
6 for a term of 70 months. That sentence is imposed to run
7 consecutively to the sentence imposed in Case No. 12CR123
8 followed by 15 years of supervised release, which shall run
9 concurrently with the supervised release imposed as to
10 12CR123. A special assessment of \$100 is mandatory and is
11 hereby imposed in this case for a total of \$200. Those
12 special assessments are due and payable immediately.

13 The Court does recommend to the Bureau of Prisons
14 that the defendant be designated to a facility where he may
15 receive a psychological evaluation and any recommended
16 treatment while in the custody of the Bureau of Prisons,
17 and, furthermore, that he be designated to a facility where
18 he may receive such medical treatment as deemed reasonably
19 necessary by the Bureau of Prisons.

20 During the period of supervised release, it is
21 ordered that the defendant shall comply with the standard
22 terms and conditions of supervised release. In addition to
23 the standard terms and conditions, the following special
24 conditions are imposed:

25 One, the defendant shall cooperatively participate

1 in an evaluation and a mental health treatment program with
2 emphasis on sex offender treatment and pay for any treatment
3 services as directed by the probation officer. Treatment
4 may include any physiological testing such as the polygraph
5 and penile plethysmograph and the use of any prescribed
6 medications.

7 Two, the defendant shall not use or possess a
8 computer to access any online computer service at any
9 location, including employment, without the prior approval
10 of the probation officer. This includes any internet
11 service provider, bulletin board system, or any other public
12 or private computer network. And it seems to me,
13 Ms. Costner and Mr. Green, I don't intend this provision to
14 cover a standalone, not online, diagnostic computer that may
15 be used solely for purposes of automotive employment if I'm
16 making myself clear.

17 MR. GREEN: Yes, sir.

18 THE COURT: This provision is not inclined --
19 imposed to include an automotive diagnostic computer that is
20 not online and is available solely for the purpose of
21 conducting automotive computer diagnostics.

22 Three, if granted access to an online computer
23 service, the defendant shall consent to the probation
24 officer conducting periodic, unannounced examinations of his
25 computer equipment which may include, hardware, software,

1 and copying all data from his computers. This may also
2 include the removal of such equipment when necessary for the
3 purpose of conducting a more thorough examination.

4 Four, the defendant shall consent to third-party
5 disclosure to any employer or potential employer concerning
6 any computer-related restrictions that have been imposed
7 upon him.

8 Five, the defendant shall provide personal,
9 business, telephone records to the probation officer upon
10 request and consent to the release of certain information
11 from any online, telephone, or similar account.

12 Six, the defendant shall not have any contact
13 other than incidental contact in a public forum such as
14 ordering in a restaurant, grocery shopping, etc., with any
15 person under the age of 18 except for his own children
16 without prior permission of the probation office. Any
17 approved contact shall be supervised by an adult at all
18 times. The contact addressed in this condition includes,
19 but is not limited to, direct or indirect, personal,
20 telephonic, written, or through a third party. If the
21 defendant has any contact with any child, that is, a person
22 under the age of 18 years not otherwise addressed in this
23 condition, the defendant is required to immediately remove
24 himself from the situation and notify the probation officer
25 within 24 hours.

1 Seven, the defendant shall not frequent places
2 where children congregate, that is, parks, playgrounds,
3 schools, video arcades, day care centers, swimming pools, or
4 other places primarily used by children under the age of 18
5 without the prior approval of the probation officer.

6 Six [sic], the defendant shall not view, purchase,
7 possess, or control any sexually explicit materials
8 including, but not limited to, pictures, magazines,
9 videotapes, movies, or any other material obtained through
10 access to any computer or any material linked to computer
11 access or use. I think I said six. I think I'm on nine.

12 The defendant shall submit to a search of his
13 person, property, house, residence, vehicle, papers,
14 computer, or other electronic communication or data storage
15 devices or media and effects at any time without a warrant
16 by any law enforcement officer or probation officer with
17 reasonable suspicion concerning unlawful conduct or a
18 violation of a condition of probation or supervised release.

19 And, ten, the defendant shall register with the
20 state sex offender registration agency in each jurisdiction
21 where he resides, is employed, carries on a vocation, or is
22 a student. The defendant will be required to keep his
23 registration current. For initial registration only, the
24 defendant must also register in the jurisdiction where he
25 was convicted if he does not reside in that jurisdiction.

1 Mr. Welter, you do have the right to appeal the
2 sentence that I have imposed in this case. If you choose to
3 appeal, notice of appeal must be filed within 14 days of
4 entry of judgment. If you wish to appeal and cannot afford
5 the services of counsel, counsel will be appointed to
6 represent you. Ms. Costner will be responsible for advising
7 you with respect to your right to appeal and filing a notice
8 of appeal if you instruct her to do so.

9 Ms. Costner, anything further?

10 MS. COSTNER: No, Your Honor.

11 THE COURT: Mr. Green?

12 MR. GREEN: A destruction order for the hard
13 drives at the expiration of the period of appeal and an
14 order for return of the firearm to its lawful owner; and if
15 that person cannot lawful possess one, then it be destroyed.

16 THE COURT: All right. I will order the
17 destruction of any computer hard drive seized at the
18 conclusion of any appeals period, and I'll order the return
19 of the firearm to a lawful, rightful owner if one can be
20 located upon reasonable efforts, and, if not, the firearm
21 destroyed according to law at the conclusion of any appeals
22 period.

23 All right. Good luck to you, Mr. Welter.

24 (At 11:36 a.m., proceedings concluded.)

25

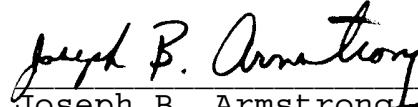
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C E R T I F I C A T E

I, JOSEPH B. ARMSTRONG, RMR, FCRR, United States
District Court Reporter for the Middle District of North
Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of
the proceedings had in the within-entitled action; that I
reported the same in stenotype to the best of my ability;
and thereafter reduced same to typewriting through the use
of Computer-Aided Transcription.

Date: 09/30/13



Joseph B. Armstrong, RMR, FCRR
United States Court Reporter
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Greensboro, NC 27401